

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 25, 2007

No. 06-41538
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

OBUNDIO MORENO-GOMEZ, also known as Abulio Moreno-Gomez

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:06-CR-727-ALL

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Obundio Moreno-Gomez (Moreno) appeals his guilty plea conviction and 41-month sentence for illegally reentering the United States following deportation. In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Moreno challenges the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. This court has held that this issue is

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

“fully foreclosed from further debate.” *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202).

Accordingly, the judgment of the district court is AFFIRMED.